When School Boards Run Amuck

OPINION No. 396 of Attorney General John G. Price of Ohio, on the power of a school board to establish military training in the schools without special authority from the legislature, to make such training compulsory on any pupil or to make such military training a prerequisite to promotion or graduation.

The Ohio Constitution Foils the School Board!

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Columbus, Ohio,
June 13, 1919.

Hon. Frank B. Pearson,
Superintendent of Public Instruction,
Columbus, Ohio.

Dear Sir:

Acknowledgement is made of your request for an opinion upon the statement of facts submitted by you[1] and your query[2] as to the power of the board of education of Cleveland to require certain things of the students and their parents.[3]

Any instruction in military training contemplated under Ohio law must come from the language of section 7721, G. C., for this is the only enactment on physical training. This section[4] was passed and approved by the governor on April 24, 1904, at a time when this country was at peace with the world, and it has existed without change or amendment for fifteen years. It was passed at a time when gymnasiums and courses in manual training were being advocated and introduced, and it is clear that no thought of compulsory military training in the public schools was in the mind of the general assembly at that time, nor has any law ever been passed since then indicating that the lawmaking body of the State desired compulsory military training in the public schools for which they legislate.

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1 See Appendix A for the statement of facts submitted.

2 See Appendix B for the concrete query.

3 See Appendix C for brief statement furnished the Attorney General by the Superintendent of Schools, Cleveland, regarding the military training established in the high schools there.

4 For the section providing for physical instruction in the public schools see Appendix D.

Opinion:

The question before us is not upon the merits of military training, but simply the question as to whether under *existing* law in Ohio any board of education can do the following things:

1. Establish military training under section 7721, G. C., which covers physical training, or section 7649, G. C., which governs the course of study.

2. Make such military training compulsory on any pupil.

3. Make such military training a part of the "prescribed course" of study, which all pupils are required to take for promotion or graduation.

4. Require parents of pupils to make an oath of any kind as to their dictates of conscience.

5. Require the pupils to wear certain designated wearing apparel in order to avail themselves of the public school facilities.

6. Require the parent to make an expenditure of $21.85 to a certain firm for apparel for such pupil.

7. Limit the participation in a study in the curriculum to one sex, or part of the pupils.

8. Expend any school funds for rifles and ordnance under existing law.

9. Expend $100 for each instructor's expenses in a military training camp away from the school.

10. Refuse a pupil any part of the physical training granted under section 7721, G. C., unless such pupil provides a suitable and specified uniform.

11. Refuse promotion or graduation to a pupil who fails to either provide certain dress or participate in military training.

As all male pupils in the high schools in question are required by the resolution of the board of education to take military training unless specially excused, or their parents to take a certain oath as to conscience, it is entirely proper to examine the rules governing such military training and affecting in more or less degree the entire male student body.

The Facts

A thorough examination of the printed "regulations" [5] of the Cleveland High School Cadets (which is the male student body, except those specially excused) shows some drastic regulations promulgated by the Superintendent of Schools, with the knowledge and consent of the board of education, as an extension of physical training under section 7721, G. C., and in addition to the requirements of the three resolutions of the board of education heretofore quoted. Every male pupil in the high school of the city must be a cadet unless (1) he is physically unfit, (2) his parents have made an oath as to their belief, and (3) or specially excused by one person, the Superintendent of Schools. The natural result, where it is compulsory, is that those pupils who do not dress a certain way become marked by civilian attire, which indicates at once either physical defect, views of conscience or *special* excuse, and there is attendant questioning and embarrassment not contemplated by the Constitution or laws, in giving to every child equal opportunity for the mental education for which the public schools were established.

Pertinent parts of the Ohio Constitution are:

> Article I, Sec. 4: * * * And the military shall be in strict subordination to the civil power.
>
> Article I, Sec. 7: * * * Nor shall any *interferences* with the rights of *conscience* be permitted. * * * *Religion, morality* and *knowledge*, however, being essential to good government, it shall be the *duty of the General Assembly to pass suitable laws* * * * to encourage schools and the *means of instruction.*
>
> Article I, Sec. 11: * * * And no law shall be passed to restrain or abridge the liberty of speech * * *.
>
> Article I, Sec. 20: * * * And all powers not herein delegated *remain with the people.*

What High Schools May Teach

The General Code of Ohio has provided for the curriculum of high schools in the following language:

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[5] The excerpts quoted by the Attorney General are in Appendix E.

Section 7649: A high school is one of higher grade than an elementary school, in which instruction and training are given in approved courses in the history of the United States and other countries; composition, rhetoric, English and American literature; algebra and geometry; natural science, political or mental science; ancient or modern foreign languages, or both; commercial branches, or such of the branches named as the length of its curriculum makes possible. Also such other branches of higher grade than those to be taught in the elementary schools, with such advanced studies and advanced reviews of the common branches as the board of education directs."

Nothing in such section provides for military training as a branch in Ohio high schools.

The enactment of the board of education in question goes farther than many laws or ordinances subject to a referendum in that, among other things, it inaugurates a study not named in section 7649, G. C., it regulates mode of dress, its operation is limited to one sex, it demands an oath from parents, over whom boards of education have no jurisdiction, it lays an additional tax on the parent, who has already been assessed his school taxes by law, and abridges his right of contract in purchasing his son's wearing apparel for the public schools when and wherever he chooses, rather than from one designated firm, called the "official outfitter."

In the case at hand the board of education put into force in its large geographical jurisdiction, *by resolution,* an enactment that was compulsory in its nature and effective upon passage, without warrant of law, and an ultra vires enactment that carried the penalty of a denial of promotion and proper rating in the public schools unless it was complied with, including certain limited exceptions.

What Military Training Really Is

Military training in schools is a subject as large, or larger, than physical training itself, for the former has been the subject of law by Congress, passed June 3, 1916, and creating voluntary courses of training in both colleges and high schools for the Reserve Officers' Training Corps. But this is purely voluntary as to whether an institution or school unit shall avail itself of such act, in those States

which have provided for it. On the other hand, there has been no Federal enactment on physical training, but the Regulations on Military Training, issued by the War Department following such act of June 3, 1916, make "3. Physical Drills" as but one out of twenty-one subjects in military training (Army General Order 49), and such "physical drills" shall be "calisthenics, bayonet practice and combat fencing." It would seem, therefore, that military training is a larger subject than "physical training" in public schools, as contemplated in section 7721, G. C. Here the instructors were sent, at the school board's expense, to the number of ten or fifteen, to various military training camps to qualify them in teaching military training in the public schools on their return, and as the cadet regulations say the "court-martial shall be as prescribed by the United States Army Regulations," seemingly the military training contemplated would also follow army regulations, and, if so, then these are the standard subjects:

1. Infantry Drill Regulations.
2. Manual of Interior Guard Duty.
3. Physical Drills (calisthenics).
4. Military Hygiene.
5. Military Policy.
6. Small-Arms Firing Regulations.
7. Administration and Organization.
8. Map Reading.
9. Field Service Regulations.
10. Marches and Camps.
11. Signaling (semaphore and flag).

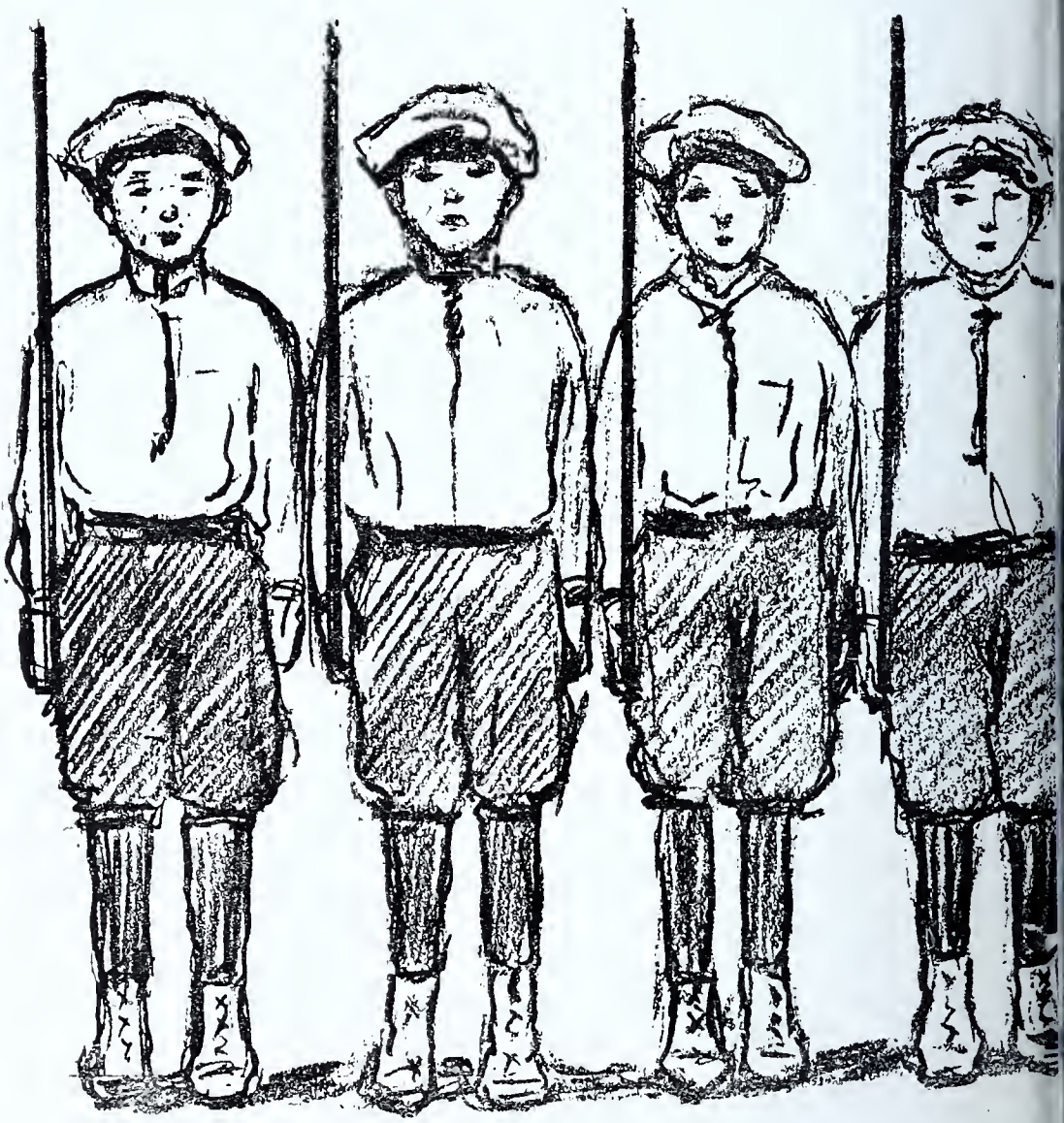
Can any one say that the legislature had in mind, when it passed section 7721, G. C., the above subjects as "physical training," or did it mean the "physical culture" gotten in the gymnasium, as so many schools for fifteen years have interpreted it? Clearly they meant the latter and not military training.

The Issue in Law

Much can be said in favor of military training in public schools, but its merits or demerits is not the question before us; the question is whether, under *existing Ohio law,* a board of education can inaugurate any military training under the head of "physical training," mentioned in section 7721, G. C. While a board of education has broad powers in its management of the public schools under its control, it cannot go beyond the things contemplated by the legislature, and until further legislation is had on the subject, a board of education has no authority to establish military training in the public schools (sec. 7649, G. C.) or compel its student body to dress in a certain manner during school hours, with the attendant expense on the parent. The public schools of the State are intended to be free in the fullest sense of the word; they are civil institutions and not military, and will always remain so; the State, while granting wide powers to charter cities in other matters, has ever kept control of the public school system, and all boards of education are operating under the laws of the State; and a board of education that spends school funds for a course in military training, does so without authority under existing law and against the prohibition in section 7649, G. C.

No Stretching Curriculum

A board of education cannot add to its study curriculum a branch for which there is no warrant of law and then compel pupils to take such branch; neither can it deny physical training privileges established under section 7721, G. C., to any pupils who fail to buy a certain uniform; nor can failure to take military training by any pupil be made to militate against his general standing in the public school as regards promotion. There is no authority for a board of education to establish military training under section 7721, G. C., as "physical training," and expend money therefor from their own funds or compel parents to buy uniforms for pupils, and the branches taught in Ohio high schools under section 7649, G. C., do not include military training.



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No Camouflage

Under existing State law a board of education cannot include military training in its course of study and compel students to furnish uniforms the penalty for failure to do so being a loss of standing for promotion in the school. And before boards of education in Ohio have power to establish such military training or expend money for rifles and ordnance, there must be further legislation on the subject. The subject is larger than the "physical training" contemplated in section 7721, G. C., which section also means that the "physical training" open to one pupil shall be open to every other pupil; instructors in physical training can be paid for such training under section 7721, G. C., and their salaries increased during employment, but a board cannot expend money from school funds to send them away to be further educated, any more than they could send the music teacher to a conservatory at public expense.

Summing Up

It is therefore the opinion of the Attorney General that:

1. Boards of education cannot establish military training in public schools under section 7721, G. C. [the physical training section], of existing law.

2. All courses of study in high schools shall be in compliance with section 7649, G. C.

3. A pupil cannot be discriminated against in his general standing in school because he does not join a military unit in such school.

4. There is no provision in law for a board of education to purchase military ordnance or pay expenses of physical training teachers at a military camp.

Respectfully,

JOHN G. PRICE,
Attorney General.

Appendix A

Statement of facts submitted to the Attorney General of Ohio by the Superintendent of Public Instruction:

I.

"On January 3, 1918, the board of education of the city school district of the city of Cleveland passed and adopted the following, known as Resolution No. 7596, 'To provide Military Training':

'Whereas present conditions demand the extension of the course in physical training to include military training for pupils in the senior high school; therefore, be it

'Resolved, by the board of education of the city school district of the city of Cleveland,

'1. That an approved course in military training shall be provided by the Assistant Superintendent of Schools in charge of physical education under the direction of the Superintendent of Schools, to be installed in the Cleveland senior high schools as a part of the prescribed course of study, to go into effect at the opening of schools in September, 1918.

'2. That said course of study shall consist of such adaptation of the manual of arms, drills, physical exercises, studies, etc., as shall be prescribed by the Assistant Superintendent in charge of physical education, with the approval of the Superintendent.

'3. That all male students in the tenth, eleventh and twelfth years of the public schools shall be required to take the said course with the exception of the following:

'(a) All male students who shall be found on examination by the Assistant Superintendent in charge of physical training to be physically unfit to pursue the course, provided that exemption from the course shall cease with the restoration of the pupil to a state of physical fitness.

'(b) All male students whose parents or guardians make oath that, in obedience to the dictates of conscience, they petition the board of education to excuse their children from such study or exercise as is exclusively military in content.

'(c) All male students who, for reasons which are good and sufficient in the judgment of the Superintendent of Schools, may be excused from such drill.

'4. Dress.—That all male students of the tenth, eleventh and twelfth years of the public schools shall be required to provide themselves such uniform dress as shall be determined by the board of education; it being understood that the prescribed uniform shall conform to style, quality and cost prevailing in educational institutions of high school rank where military uniforms are required.

'5. Credit.—That credit shall be allowed for military training under conditions applying to other regular subjects.

'6. Time.—That five periods per week shall be assigned to military training, such periods to be adjusted to the demands of the course of study.

'7. Equipment.—That the board of education shall provide training rifles and other ordnance, colors, drums, etc.

'8. Supervision.—That the immediate supervision of military training shall be carried out, under the general direction of the Assistant Superintendent in charge of physical education, by an experienced military officer employed for that purpose.

'9. Teachers.—That not less than ten and not more than fifteen teachers of physical training—or others qualified—shall be selected and assigned by the Superintendent of Schools to training camps for instruction preparatory to teaching and directing this work; the board of education to reimburse each teacher so assigned in the sum of one hundred dollars ($100) to cover necessary expenses.

'10. Officers' Training.—That a two weeks' officers' training course for high school seniors be provided under the direction of the supervising military officer immediately preceding the opening of the schools in September.

'11. And be it further resolved, that an appropriation of sixteen thousand five hundred dollars ($16,500) be and is hereby made to meet the expense of the board of education of the inauguration and installation of said course in military training.'

II.

"On Monday, August 19, 1918, Resolution No. 7822, 'Adopting Official Uniform and Designating the Halle Bros. Company as the Official Uniform Outfitters of This Board,' was passed and adopted, as follows:

'Whereas, in accordance with and by virtue of the authority given in Resolution No. 7693, bids from manufacturers for the furnishing of standard uniforms to pupils in the Cleveland high schools who are to take military training were received under date of August 7, 1918, and

'Whereas the bid of the Halle Bros. Company, low bidder in accordance with the specifications, is as follows:

Unit prices per uniform, as provided in Item No. 5 (breeches and leggings)	$21.85
Unit price per uniform, as provided in Item No. 6 (long trousers)	20.50
Unit price per coat	12.00
Unit price per breeches	7.50
Unit price per trousers	7.50
Unit price per cap	1.50
Unit price per leggings	1.40
Unit price per belt	0.45

now, therefore,

'Be it resolved by the board of education of the city school district of the city of Cleveland that the uniform described in Item No. 5 of the specifications, consisting of coat, breeches, cap, leggings and belt be, and the same is hereby, adopted as the official uniform for the purpose above indicated; and, further

'Resolved, that the Halle Bros. Company be, and is hereby, designated as the official uniform outfitter until December 31, 1918; and, further

'Resolved, that the clerk be instructed to notify the Halle Bros. Company accordingly.'

III.

"On January 6, 1919, Resolution No. 9067, 'Continuing Military Training,' was passed and adopted, as follows:

'Whereas this board by Resolution No. 7596, adopted June 3, 1918, provided for military training for male pupils in the tenth, eleventh and twelfth years of the high schools, as an extension of the course in physical training; and

'Whereas the signing of the armistice in the World War has raised a doubt in the minds of the public as to the permanency of military training in the Cleveland public schools; therefore, be it

'Resolved, by the board of education of the city school district of the city of Cleveland, that military training be and is hereby declared to be a permanent part of the curriculum of the Cleveland high schools; and be it further

"Resolved, that said military training shall be conducted for pupils in the tenth, eleventh and twelfth years during the remainder of the present school year, in accordance with the provisions of said Resolution No. 7596, except that military training may also be taken voluntarily by male pupils in the ninth year, during the second semester of this school year; and that beginning with the school year 1919-20, in September next, military training shall be compulsory (save as exemptions may be made under paragraphs a, b, and c of Division 3 of said Resolution No. 7596) for all male pupils in the ninth, tenth and eleventh years and shall be voluntary for all male pupils in the twelfth year.'

Appendix B

Query submitted to the Attorney General by the State Superintendent of Public Instruction:

Query.—Can the board of education of the city of Cleveland require all male students of the ninth, tenth and eleventh years of the public schools of the city of Cleveland to provide for themselves uniform dress, as prescribed by the board and designated in Item No. 5 of Resolution No. 7822, the same costing $21.85 for suit, unless ex-

empted under paragraphs a, b, and c of Division 3 of said Resolution No. 7596, and if the pupils mentioned above fail or refuse to provide for themselves the prescribed uniform, can the board of education refuse to permit such pupils to participate in this military training and further refuse to grant them promotion because of such failure or refusal?

Appendix C

In seeking further information upon this subject, the board of education of the city of Cleveland was communicated with, and the secretary to the Superintendent of Schools of that city furnishes the following statement:

At present about twenty-eight hundred pupils in the ten senior high schools of Cleveland are taking military training. These pupils are included in the tenth, eleventh and twelfth years of the classes of 1918-19, for whom military training is compulsory under the action of the board in Resolution No. 7596, and also some pupils in the ninth year who are permitted to take military training during the remainder of this school year under Resolution No. 9067. You will note that Resolution No. 9067 provides that with the beginning of the next school year military training will be compulsory for pupils in the ninth, tenth and eleventh years and will be optional with those in the twelfth year. This training is made a part of the curriculum for the high schools and is intended to supplement the regular physical training or to be correlated with it.

Appendix D

Excerpts from the printed "regulations" of the Cleveland High School Cadets, as promulgated by the Acting Superintendent of Schools:

6. The board of education will provide the necessary blank forms for reports and records for each of said high school cadet companies.

13. Each cadet shall keep himself supplied with the regulation uniform, which he must maintain in good order. During the school day he shall wear no other dress, except by permission * * *.

17. The general standing of a cadet (pupil) shall be determined by combining the academic standing, the military standing and the deportment, the weight given each standing being as follows:

Academic, 50 per cent.

Military, 30 per cent.

Deportment, 20 per cent.

18. * * * Violations of these regulations committed by any cadet shall be triable by court-martial * * * according to the nature of the offense * * *.

19. The organization, procedure and records of all **courts-martial** shall conform to those **prescribed by the United States Army Regulations.**

22. At the beginning of each semester each cadet shall receive a credit of one hundred merits. Any cadet who exhausts his full credit of merits during the semester shall forfeit his half credit for the term * * *.

23. * * * It must be borne in mind that a demerit materially **affects a cadet's standing in the school** * * *.

24. No cadet shall address an officer or cadet who may have reported him for a delinquency on the subject of such report, unless **specially authorized** by the principal or commandant to do so, and no officer or cadet who has made a report against a cadet **shall hold any conversation with him** in regard to it unless by permission of the commanding officer.

31. * * * Any cadet who in concert with others under pretence of procuring redress of grievance adopts any measure, or signs any paper * * * or does anything to the prejudice * * * of military discipline * * * **shall be dismissed** or otherwise punished according to the nature of the offense.

43. No cadet should appear in uniform on the streets or in any public place with his hands in his pockets, nor should any uniformed cadet appear except in proper uniform. Never wear a mixed civilian and military dress or leave buttons unbuttoned.

51. * * * Ignorance of a regulation will not be accepted as an excuse for violation of the same.

Submitted and approved by the Acting Superintendent of Schools.

Appendix E

Section 7721 of the Ohio General Code, providing for physical training in the public schools, reads as follows:

Physical training shall be included in the branches regularly to be taught in public schools in city schools districts, and in all educational institutions supported wholly or in part by money received from the State. Boards of education of city school districts and boards of such educational institutions must make provisions in the schools and institutions under their jurisdiction for teaching physical training and adopt such methods as will adapt it to the capacity of pupils in the various grades therein. Other boards may make such provisions. The curriculum in all normal schools of the State shall contain a regular course on physical education.

NOTE BY THE AMERICAN UNION AGAINST MILITARISM:

WHILE few school boards have ridden quite so rough shod over students, parents and the statutes as the Cleveland school board, whose conduct is discussed in this opinion, nevertheless many boards have been tempted to yield to newspaper clamor and install a more or less denatured type of military training. Some have signed agreements with the War Department for the establishment of units of the Junior Reserve Officers' Training Corps. These units are nominally voluntary, but the school board must agree that no male student volunteering for the unit shall be promoted or graduated unless he completes the military training course. Has any school board the right to deprive a student of his diploma for failure to complete a purely elective course? Has a school board the power to sign such an agreement without express authority from the Legislature? Can a school board establish military training under legislative authority to establish "physical training"? If you are interested in preserving physical education from the drag and nuisance of military drill, we suggest that you look into the law in your State in the light of the suggestions thrown out in this opinion.

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